

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:20-cv-00250-MR-WCM

JAMIE ALLEN, MELANIE DYER,)
NATHAN DAVENPORT,)
KATRINA LEDFORD,)
AMANDA TIMSON, SAMANTHA TORRES,)
JESSICA FARQUHAR, JEREMY SILVERS,)
LIBBY HELMS, TESSA DORSEY (SIMONS),)
STEPHEN DOWNEY, SHERRY GARLAND,)
REGINA MANEY, TIENDA ROSE PHILLIPS,)
STEPHEN ASHE, SARAH CRAPSE,)
KELLEY WALKER, SHEENA DOCKERY,)
CAINE BURNETTE, DESIREE REILLY,)
SHALEES GREENELEE,)
DESEAN AMIR PATTERSON,)
MARTHA KILLIAN,)
DESMOND CHAMPAGNE,)
HANNAH ALLEN, PATRICIA SIMONDS,)
P.A.,)
by and through guardian ad litem Joy McIver,)
G.A.,)
by and through guardian ad litem Joy McIver,)
J.A.,)
by and through guardian ad litem Joy McIver,)
M.D.,)
by and through guardian ad litem Joy McIver,)
C.D.,)
by and through guardian ad litem Joy McIver,)
K.D.,)
by and through guardian ad litem Joy McIver,)
C.A.,)
by and through guardian ad litem Joy McIver,)
L.T.,)
by and through guardian ad litem Joy McIver,)
A.D.,)
by and through guardian ad litem Joy McIver,)

O R D E R

M.C.,)
by and through guardian ad litem Joy McIver,)
A.C.,)
by and through guardian ad litem Joy McIver,)
J.S.,)
by and through guardian ad litem Joy McIver,)
S.W.,)
by and through guardian ad litem Joy McIver,)
V.W.,)
by and through guardian ad litem Joy McIver,)
J.D.,)
by and through guardian ad litem Joy McIver,)
A.R.,)
by and through guardian ad litem Joy McIver,)
J.B.,)
by and through guardian ad litem Joy McIver,)
D.S.,)
by and through guardian ad litem Joy McIver,)
A.H.,)
by and through guardian ad litem Joy McIver,)
J.H.,)
by and through guardian ad litem Joy McIver,)
C.L.,)
by and through guardian ad litem Joy McIver,)
K.L.,)
by and through guardian ad litem Joy McIver,)
L.R.,)
by and through guardian ad litem Joy McIver,)
Z.A.,)
by and through guardian ad litem Joy McIver,)
E.M.,)
by and through guardian ad litem Joy McIver,)
P.M.,)
by and through guardian ad litem Joy McIver,)
Z.B.,)
by and through guardian ad litem Joy McIver,)
A.B.,)
by and through guardian ad litem Joy McIver,)
T.P.,)
by and through guardian ad litem Joy McIver,)

Da.P.,)
by and through guardian ad litem Joy McIver,)
De.P.,)
by and through guardian ad litem Joy McIver,)
B.S.,)
by and through guardian ad litem Joy McIver,)
Dam.W.,)
by and through guardian ad litem Joy McIver,)
Dar.W.,)
by and through guardian ad litem Joy McIver,)
ERNIE CARTER, CHEYENNE SPICOLA,)
J.G.,)
by and through guardian ad litem Joy McIver,)
T.G.,)
by and through guardian ad litem Joy McIver,)
K.C.,)
by and through guardian ad litem Joy McIver,)
M.C.,)
by and through guardian ad litem Joy McIver,)
)
Plaintiffs,)
)
vs.)
)
CHEROKEE COUNTY, N.C.,)
SCOTT LINDSAY, in his official capacity)
as DSS Attorney for Cherokee County,)
SCOTT LINDSAY, in his individual capacity,)
CINDY PALMER, in her official capacity)
as Director of DSS in Cherokee County,)
CINDY PALMER, in her individual capacity,)
DONNA CRAWFORD, in her official capacity)
as Director of DSS for Cherokee County,)
LISA DAVIS, in her official capacity as)
Director of Cherokee County Department of)
Social Services,)
)
Defendants.)

THIS MATTER is before the Court on the Defendants' Motion to Dismiss [Doc. 11], the Magistrate Judge's Memorandum and Recommendation [Doc. 21] regarding the disposition of that motion, and the Defendants' Objection to the Memorandum and Recommendation [Doc. 23].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendants' Motion to Dismiss and to submit a recommendation for its disposition. On May 19, 2021, the Magistrate Judge issued a Memorandum and Recommendation, recommending that the Defendants' Motion to Dismiss be granted in part and denied in part. [Doc. 21]. The Magistrate Judge recommended dismissing with prejudice the state law claims for negligence; gross negligence; negligent hiring, retention, and supervision; grossly negligent hiring, retention, and supervision; negligent supervision; grossly negligent supervision; and civil obstruction of justice asserted by the Plaintiffs who signed their Custody and Visitation Agreements ("CVAs") at least three years prior to the date on which the original Complaint was filed.¹ [Id. at 21-22]. The Magistrate Judge also recommended that the claims of Wade

¹ The Magistrate Judge refers to these Plaintiffs as "the Subject Plaintiffs" throughout the Memorandum and Recommendation. [See, e.g., Doc. 21 at 21].

Walters be dismissed without prejudice. [Id. at 21]. Finally, the Magistrate Judge recommended that the Court deny the Defendants' Motion to Dismiss in all other respects. [Id. at 22].

The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. On June 2, 2021, the Defendants filed their Objection to the Memorandum and Recommendation. [Doc. 23]. On June 16, 2021, the Plaintiffs filed their Response to the Defendants' Objection. [Doc. 24].

After a careful review of the Memorandum and Recommendation and the Defendants' Objection thereto, the Court concludes that the Magistrate Judge's proposed conclusions of law are correct and are consistent with current case law. It is plausible that some or all of the Plaintiffs did not possess enough facts about their injuries to trigger accrual until after signing their respective CVAs, and therefore accrual did not commence in the mechanical way the Defendants contend that it did. See Nasim v. Warden, Md. House of Corr., 64 F.3d 951, 955 (4th Cir. 1995) (en banc) (citation omitted). Because the Court must accept the facts alleged in the Complaint, the Amended Complaint, and the Second Amended Complaint as true and base its determination on those facts alone, dismissal at this

stage would be improper. See Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009).

Accordingly, the Court overrules the Defendants' Objection to the Memorandum and Recommendation and accepts the Magistrate Judge's recommendation that the Defendants' Motion to Dismiss be granted in part and denied in part.

IT IS, THEREFORE, ORDERED that the Defendants' Objection to the Magistrate Judge's Memorandum and Recommendation [Doc. 23] is **OVERRULED**, and the recommendation of the Magistrate Judge [Doc. 21] is **ACCEPTED**.

IT IS FURTHER ORDERED that the Defendants' Motion to Dismiss is **GRANTED IN PART AND DENIED IN PART** as follows:

- (1) The claims of Wade Walters are **DISMISSED WITHOUT PREJUDICE**;
- (2) The state law claims for negligence; gross negligence; negligent hiring, retention, and supervision; grossly negligent hiring, retention, and supervision; negligent supervision; grossly negligent supervision; and civil obstruction of justice asserted by Jamie Allen and Melanie Dyer; Hannah Allen and Desmond Champagne; Caine Burnette; Nathan Davenport and Melanie Dyer; Nathan

Davenport and Katrina Ledford and their child K.D.; Sheena Dockery; Tessa Dorsey; Jessica Farquar; Stephen Downey and Sherry Garland; Shalees Greenlee; Libby Helms; Martha Killian; Desiree Reilly and Desean Patterson; Jeremy Silvers and his child D.S.; Patricia Simonds; Samantha Torres; Amanda Timpson; Kelly Walker; and Cheyenne Spicola are **DISMISSED WITH PREJUDICE**; and

(3) In all other respects, the Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

09/13/2021



Martin Reidinger
Chief United States District Judge

